JOBNAME: No Job Name PAGE: 1 SESS: 1 OUTPUT: Fri Sep 30 14:04:31 2011
//caseml/case/mlj/1|1-Suyanti_185493_126936_01

Public Prosecutor v Suyanti

HIGH COURT (BRUNEI DARUSSALAM) — CRIMINAL TRIAL NO 14 OF 2010
KIFRAWI CJ
27 NOVEMBER 2010

Criminal Procedure — Sentencing — Mitigating factors — First offender — Guilty plea — Saving of court's time — Accused regretted offence — Accused bundled up 14-month-old child in cloth and pillows in laundry basket left in closed wardrobe — Act likely to have caused death

The accused, an Indonesian maid in the employ of an imam with the Royal Brunei Armed Forces and his wife, was charged in the High Court with an act that almost caused the death of the imam's 14 months old child ('the boy'). The maid had wrapped the boy in a piece of long cloth, tied a scarf around his mouth and nose, put him in a laundry basket, covered it with two pillows and put the basket inside a closed wardrobe. The accused was charged with committing the act with knowledge that if the boy had died she would have been guilty of murder or, alternatively, of culpable homicide not amounting to murder. The accused also faced a second charge of wrongfully confining the boy in a manner that showed an intention that the confinement be not known to the boy's mother. The accused was charged under, respectively, ss 307, 308 and 346 of the Penal Code (Chapter 22). The accused pleaded guilty to the alternative first charge and the second charge. According to the facts of the case, on the morning of the day in question, the accused, her female employer and the latter's three children, including the boy, returned to the employer's flat at Lumut Camp, Battalion 3, Lumut, after spending the night at Temburong. From the time she arrived at the flat, the accused worked incessantly, carrying the children and luggage from the car to the flat and, thereafter, cooking, doing the laundry and cleaning the flat. She did all the chores while carrying the boy in a cloth body sling or 'gendong'. The accused was dizzy and tired and had not had enough sleep. She tried putting the boy to sleep but he was crying and refused to sleep or to be put down from the 'gendong'. She was angry with the boy and wanted to finish her chores. When the boy finally slept in the 'gendong' about 1pm, the accused unfurled the 'gendong', wrapped the boy in it, tied a scarf around his mouth and nose, put him in a basket containing bed sheets, placed two pillows on top of his head and placed the basket inside the bottom of a wardrobe full of clothes in hangers and closed the wardrobe door. She then continued doing her chores and later fell asleep. About one and a half hours later, the boy's mother woke from her sleep and looked for the boy but he could not be found. The accused said she did not know where he was and followed the boy's mother about the house in search for the child. Finally, upon

JOBNAME: No Job Name PAGE: 2 SESS: 1 OUTPUT: Fri Sep 30 14:04:31 2011
//caseml/case/mlj/1|1-Suyanti_185493_126936_01

hearing his cries, the mother found the boy in the wardrobe, red-faced and sweating. The accused was later taken to the police station.

Held, convicting and sentencing the accused to 32 months jail on the alternative charge as well as on the second charge with both sentences to run concurrently:

(1) The court took into consideration that the accused had pleaded guilty and saved the court's time and that she regretted what she had done. She also had no previous conviction (see para 3).

(2) Her crimes against the boy were, however, very serious. He was vulnerable and needed her protection. She was entrusted by her employer to look after the child but she failed to discharge her duty. It was no excuse that she was too tired and not feeling well. She could have handed the boy to his mother and informed her of the problems she was having at that time (see para 3).

(3) For the alternative charge, since no hurt was caused to the child, the punishment under law was jail for up to five years plus a fine. For the offence of wrongful confinement, the jail term may also extend to five years. Taking four years as a starting point for both offences and after giving the usual deduction for the accused's guilty plea and previous good character, she had to serve 32 months each for the two offences; the sentences to run concurrently since both offences arose from the same facts (see paras 4–6).

[Bahasa Malaysia summary

Tertuduh, seorang pembantu rumah Indonesia yang diambil berkerja oleh seorang imam Angkatan Bersenjata DiRaja Brunei dan isterinya, dituduh di Mahkamah Tinggi dengan perlakuan yang hampir menyebabkan kematian anak imam berumur 14 bulan ('kanak-kanak lelaki tersebut'). Pembantu rumah tersebut telah membungkuskan kanak-kanak lelaki tersebut dengan sehelai kain panjang, mengikat selendang di mulut dan hidungnya, meletakkannya di dalam bakul pakaian, menutupnya dengan dua bantal dan meletakkan bakul tersebut di dalam almari tertutup. Tertuduh dituduh melakukan perlakuan tersebut dengan pengetahuan bahawa jika kanak-kanak lelaki tersebut mati, dia akan bersalah kerana membunuh atau secara alternatifnya, homisid salah yang tidak menjumlahkan kepada pembunuhan. Tertuduh juga menghadapi tuduhan kedua kerana penahanan salah kanak-kanak lelaki tersebut dalam keadaan yang menunjukkan niat bahawa penahanan tidak diketahui oleh ibu kepada kanak-kanak tersebut. Tertuduh dituduh di bawah ss 307, 308 dan 346 Kanun Keseksaan (Bab 22). Tertuduh mengaku bersalah kepada alternatif tuduhan pertama dan tuduhan kedua. Menurut fakta kes, pada pagi hari kejadian, tertuduh, majikan wanitanya dan ketiga-tiga anaknya termasuk kanak-kanak lelaki tersebut, pulang dari flat

JOBNAME: No Job Name PAGE: 3 SESS: 1 OUTPUT: Fri Sep 30 14:04:31 2011
//caseml/case/mlj/1|1-Suyanti_185493_126936_01

majikannya di Kem Lumut, Batallion 3, Lumut selepas bermalam di Temburong. Dari masa dia tiba di flat, tertuduh bekerja tidak henti-henti, mendukung anak-anak tersebut, mengangkat bagasi daripada kereta ke flat dan kemudian memasak, membasuh pakaian dan membersihkan flat. Dia melakukan semua kerja sambil mendukung kanak-kanak lelaki tersebut dalam kain yang diikat pada badan atau 'gendong'. Tertuduh berasa pening dan penat dan tidak cukup tidur. Dia cuba menidurkan kanak-kanak lelaki tetapi kanak-kanak lelaki tersebut menangis dan enggan tidur atau diturunkan dari 'gendong'. Dia berasa marah dengan kanak-kanak lelaki tersebut dan ingin menghabiskan kerja-kerjanya. Apabila kanak-kanak lelaki tersebut akhirnya tidur di dalam 'gendong' pada kira-kira 1 tengahari, tertuduh membuka 'gendong', membungkus kanak-kanak lelaki tersebut di dalamnya, mengikat selendang di mulut dan hidungnya, meletakkannya dalam bakul mengandungi cadar-cadar, meletakkan dua bantal atas kepalanya dan meletakkan bakul tersebut dalam bahagian bawah almari penuh dengan pakaian bergantung dan menutup pintu almari. Dia kemudian meneruskan kerja-kerjanya dan kemudian tertidur. Kira-kira satu jam setengah kemudian, ibu kepada kanak-kanak lelaki tersebut terjaga dari tidurnya dan mencari kanak-kanak lelaki tersebut tetapi tidak dijumpai. Tertuduh mengatakan dia tidak tahu di mana dia berada dan mengikut ibu kepada kanak-kanak lelaki tersebut seluruh rumah mencari anaknya. Akhirnya, apabila mendengar tangisan, ibu tersebut menjumpai anaknya di dalam almari, mekanya merah padam dan berpeluh. Tertuduh kemudiannya dibawa ke balai polis.

Diputuskan, menyabitkan dan menjatuhkan hukuman 32 bulan penjara ke atas tertuduh sebagai pertuduhan alternatif dan sebagai pertuduhan kedua dengan kedua-dua hukuman berjalan serentak:

(1) Mahkamah mengambilkira bahawa tertuduh telah mengaku bersalah dan menjimatkan masa mahkamah dan menyesali apa yang dilakukannya. Dia juga tiada sabitan terdahulu (lihat perenggan 3).

(2) Jenayahnya terhadap kanak-kanak lelaki tersebut, walau bagaimanapun, adalah amat serius. Dia terdedah dan memerlukan perlindungann tertuduh. Dia diamanahkan oleh majikannya untuk menjaga anak tersebut tetapi gagal untuk menjalankan tanggungjawabnya. Ia bukan alasan bahawa dia berasa letih atau tidak sihat. Dia sepatutnya menyerahkan kanak-kanak lelaki tersebut kepada ibunya dan memberitahunya akan masalah yang dihadapi ketika itu (lihat perenggan 3).

(3) Bagi pertuduhan alternatif, memandangkan tiada kecederaan berlaku ke atas anak tersebut, hukuman di bawah undang-undang adalah penjara hingga lima tahun dan denda. Bagi kesalahan penahanan secara salah, tempoh penjara boleh dilanjutkan ke lima tahun. Mengambil empat tahun sebagai titik permulaan bagi kedua-dua kesalahan dan selepas

JOBNAME: No Job Name PAGE: 4 SESS: 1 OUTPUT: Fri Sep 30 14:04:31 2011
//caseml/case/mlj/1|1-Suyanti_185493_126936_01

memberi pengurangan seperti biasa bagi pengakuan bersalah tertuduh dan kelakuan baik terdahulu, dia hendaklah menjalani 32 bulan masing-masing bagi kedua-dua kesalahan; hukuman berjalan serentak memandangkan kedua-dua kesalahan timbul daripada fakta yang sama (lihat perenggan 4–6).]

Notes

For cases on mitigating factors, see 5(2) *Mallal's Digest* (4th Ed, 2010 Reissue) paras 4587–4598.

Ak Shahyzul Khairudden bin Pg Abd Rahman (Deputy Public Prosecutor, Attorney General's Chambers) for the prosecution.
Defendant in person.

Kifrawi CJ:

[1] The defendant, an Indonesian amah was charged as follows:

Charge

That you, on or about the 16th day of July 2010, at about 1300 hours, at no F16, Room F-1 Lumut Camp, Batallion 3, Lumut in Brunei Darussalam, did an act, to wit, by wrapping the body of one Muhammad Darwisy Al-Wazien bin Mohammad Harun Al-Rasyid, aged 1 year and 2 months, with a piece of long cloth and by tying a scarf around the mouth and nose, and had placed him inside a laundry basket and covered the top with two pillows and putting the said basket inside a wardrobe which you then shut closed, with knowledge and under such circumstances, that if by that act you had caused the death of the said Muhammad Darwisy Al-Wazien bin Mohammad Harun Al-Rasyid, you would have been guilty of murder and thereby committed an offence punishable under section 307 of the Penal Code, Chapter 22.

Alternative Charge

That you, on or about the 16 day of July 2010, at about 1300 hours, at no F16, Room F-1 Lumut Camp, Batallion 3, Lumut in Brunei Darussalam, did an act, to wit, by wrapping the body of one Muhammad Darwisy Al-Wazien bin Mohammad Harun Al-Rasyid, aged 1 year and 2 months, with a piece of long cloth and by tying a scarf around the mouth and nose, and had placed him inside a laundry basket and covered the top with two pillows and putting the said basket inside a wardrobe which you then shut closed, with knowledge and under such circumstances, that if by that act you had caused the death of the said Muhammad Darwisy Al-Wazien bin Mohammad Harun Al-Rasyid, you would have been guilty of culpable homicide not amounting to murder and thereby committed an offence punishable under section 308 of the Penal Code, Chapter 22.

JOBNAME: No Job Name PAGE: 5 SESS: 1 OUTPUT: Fri Sep 30 14:04:31 2011
//caseml/case/mlj/1|1-Suyanti_185493_126936_01

Second Charge

That you, on or about the 16th day of July 2010, at about 1300 hours, at no F16, Room F-1 Lumut Camp, Batallion 3, Lumut in Brunei Darussalam, wrongfully confined one Muhammad Darwisy Al-Wazien bin Mohammad Harun Al-Rasyid, aged 1 and 2 months, in such manner as to indicate an intention that the confinement of the said Muhammad Darwisy Al-Wazien bin Mohammad Harun Al-Rasyid may not be known to his mother, to wit, by wrapping the body of the said Muhammad Darwisy Al-Wazien bin Mohammad Harun Al-Rasyid, aged 1 year and 2 months, with a piece of long cloth and by tying a scarf around the mouth and nose, and had placed him inside a laundry basket and covered the top with two pillows and putting the said basket inside a wardrobe which you then shut closed, and thereby committed an offence punishable under section 346 of the Penal Code, Chapter 22.

[2] She pleaded guilty to the alternative first charge and the second charge. She admitted the following statement of facts:

(a) The defendant is an Indonesian national; her date of birth was on 10 September 1985. She is married and has two children aged seven and four. Her families are in Indonesia. She arrived in Brunei to work as a domestic helper ('amah') on the 24 March 2010. Her employers are Mohammad Harun Al-Rasyid bin Haji Mohd Hassin, an Imam with the Royal Brunei Armed Forces, and Jurita Haji Md Talu/Azahari, a housewife.

(b) Her employers reside at F16, Room 1, F1 Lumut Camp, Batallion 3, Lumut in Brunei Darussalam. They have three children, the eldest daughter is three years old, the second child is one year and two months old ('the victim') and the youngest is a baby boy aged three weeks old.

(c) The victim was born on the 12 May 2008.

(d) On the 16 July 2010 at about 9.30am, the defendant, the female employer and the children arrived back at the flat after spending the night at Temburong. Upon arrival at the flat, the defendant and the female employer carried the children to the flat and the defendant went downstairs to carry their belongings from the car and upstairs again to the flat. She made three trips and down the stairs carrying their belongings.

(e) Soon after that, the defendant cooked rice porridge, washed clothes, swept and mopped the floor and washed the toilet. She did the house chores while carrying the victim in a cloth body sling or a 'gendong'. At that time she felt dizzy and was very tired. She tried to put the victim to sleep and prepared him bottled milk but the victim refused to sleep and was crying and refused to be let down from the cloth body sling or 'gendong'. She had to continue her work with the victim in the 'gendong'. At the same time, the eldest daughter asked the defendant to

JOBNAME: No Job Name PAGE: 6 SESS: 1 OUTPUT: Fri Sep 30 14:04:31 2011
//caseml/case/mlj/1|1-Suyanti_185493_126936_01

cook 'maggi' which the defendant did. The eldest daughter also wanted the defendant to carry her but the defendant was too tired and dizzy. The eldest daughter then ate maggi while watching TV in the living room and fell asleep.

(f) At around 11.30am, the female employer and the baby was inside her bedroom and both were sleeping.

(g) At about 1pm, the victim then finally fell asleep in the cloth sling or 'gendong'. Inside her bedroom, the defendant had unwrapped the cloth sling or 'gendong' from her body and put the victim on the bed. She then proceeded to wrap the victim's body using the same cloth. She then tied a scarf around his mouth and nose. She then took a tall blue laundry basket containing a few folded bed sheets and placed the wrapped (sleeping) victim whom inside that basket. Then she took two pillow cases and placed them on top of the victim's head and carried the basket and placed it inside the bottom of a wardrobe. This wardrobe was full of clothes in hangers. The defendant then shut closed the wardrobe door.

(h) After that the defendant carried on with her household chores and then she fell asleep. At about 2.30pm, the female employer went to the defendant's room to ask her to prepare bottled milk for the baby. The female employer was surprised that the victim was not in the room and asked where he was. The defendant replied that she does not know.

(i) The female employer panicked, then searched for the victim and called out his name. She searched the play room and went back to the defendant's room. All this time, the defendant pretended not to know and just followed the female employer in the search. She then heard crying noises from inside the wardrobe and opened the wardrobe door and only saw hanged clothes. She then saw the blue basket with two pillows and removed the pillows then only discovered the victim crying and sweating. The female employer then took out the victim and hugged him. His face was red and that the scarf around his nose and face had loosened by itself and moved down to his neck area.

(j) The female employer then took the victim to her bedroom to calm him. She called her husband who was working in Temburong and then called relatives to assist. The defendant was then taken to the Sungai Liang Police Station.

(k) During investigations, the defendant admitted that she was dizzy and tired and had not enough sleep. The victim was crying and refusing to sleep and still wanted to be in the cloth sling or 'gendong'. She was very angry with the victim and wanted to finish her chores. She admitted that she knew what she did could have caused the death of the victim.

JOBNAME: No Job Name PAGE: 7 SESS: 1 OUTPUT: Fri Sep 30 14:04:31 2011
//caseml/case/mlj/1|1-Suyanti_185493_126936_01

(l) The victim was examined by Dr Hj Zakir Hussain of the Suri Seri Begawan Hospital on 17 July 2010 where no external injuries were seen. The police also sought the opinion of Dr Senarath Colombage, a specialist Pathologist as to this case. It is his opinion that the victim would have suffered from asphyxia resulting from the obstructions to the air passage of air at the level of the nose and mouth by the scarf ties over the case and the pillows. He also stated that if the victim was not rescued he could have died of asphyxia.

(m) The defendant has no previous convictions.

[3] I took into consideration that she pleaded guilty to the alternative first charge and the second charge. She has saved the court's time and she also regretted what she has done. I have also noted that she has no previous conviction. However, she has committed very serious crimes against a very young victim who was at the time one year and two months old boy. He was obviously vulnerable and needed her protection. The defendant was entrusted by her employer to look after the child. By committing the criminal offences, she has failed in discharging her duty. It is no excuse that she was too tired and not feeling well. She could have easily handed the child to his mother and informed her the problems she was having at that time. It is fortunate that the child was found safe and sound, otherwise, she could face more serious charges.

ALTERNATIVE CHARGE

[4] As regards the alternative charge, since no hurt was caused to the child, the punishment fixed by the law is imprisonment for a term which may extend to five years and with fine. Taking four years as a starting point, I then give the usual deduction because of the defendant's guilty plea and previous good character. She, therefore, has to serve 32 months (two years and eight months).

SECOND CHARGE

[5] The punishment for this offence of wrongful confinement is imprisonment for a term which may extend to five years. Again, I take four years as a starting point and after giving the same deduction due to the guilty plea and good behaviour the sentence would be 32 months (two years and eight months).

JOBNAME: No Job Name PAGE: 8 SESS: 1 OUTPUT: Fri Sep 30 14:04:31 2011
//caseml/case/mlj/1|1-Suyanti_185493_126936_01

[6] The sentences for the alternative charge and the second charge are to run concurrently since both offences arise from the same facts. The total sentence will be 32 months effective from 16 July 2010 the day when the defendant was arrested.

Accused convicted and sentenced to 32 months jail on the alternative charge as well as on second charge with both sentences to run concurrently.

Reported by Ashok Kumar